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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/524,137	03/03/2005	Pierrick Girard	3952-75	2456
23117 7590 05/30/2008 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER				
PALO, FRANCIS T				
ART UNIT		PAPER NUMBER		
3644				
MAIL DATE		DELIVERY MODE		
05/30/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/524,137

Applicant(s)

GIRARD ET AL.

Examiner

Francis T. Palo

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 11-20 and 24-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 21-23 and 29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 12/10/07 have been fully considered but they are not persuasive.

Applicant submits:

- "Weber does in fact have a fibrous web, but the integrity of the web is **not** ensured by means of thermobonding fibers but instead by means of a liquid latex".
- "In the applicants' view of the Weber description, it is clear that in spite of the fact that he mentions synthetic fibers, he does not say a word about using the synthetic fibers for **bonding** the web."

Applicant is respectfully reminded that the claims are directed to an apparatus for soil mulching and not to a process of making an apparatus as argued. As Weber '104 teaches biodegradable mulchable ground covers comprised of cellulose web which optionally can contain synthetic fibers such as polyester to improve their tear strength, and PLA is a well-known biodegradable, thermoplastic, aliphatic polyester, the teaching of Weber would encompass the utilization of PLA as claimed. As Ehret '504 teaches the use of PLA in the protection of plants in agriculture and mulching, the combination is deemed proper. Again, Ehret is relied upon for the teaching of PLA in an agricultural

web, and not for the process of bonding the web together as argued. Thus, the withdrawal of the rejection of claims 1-3 and 21 based upon Weber and Ehret is not warranted as argued and those rejections are maintained herein by reference only as they are a matter of record.

Applicant submits:

- 'applicants cannot discern any motivation provided to an ordinary skilled person to combine the teachings of Weber and Anton, as Weber has nothing on his web and he does not need or require the net or grid.'

It has been held that it is not required that the prior art disclose or suggest the properties 'newly-discovered' by an applicant in order for there to be a prima facie case of obviousness (see *In re Dillon*). Moreover, as long as some motivation or suggestion to combine the reference is provided by the prior art taken as a whole, the law does not require that the references be combined for the reasons contemplated by the inventor (see *In re Beattie*). The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the reference would have suggested to those of ordinary skill in the art (see *In re Keller*).

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In this regard, a conclusion of obviousness may be based on common knowledge and common sense of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference (see *In re Bozek*).

Thus, the association of a grid associated with Weber as modified, being well-known in the art would have been an obvious modification, especially since Weber contemplates improving tear strength.

As to the basis weight of the grid as claimed, the rejection of claim-6 is maintained in consideration of the aforementioned case law.

As to claim-7, the applicant has been offered an opportunity to clarify through a drawing of his invention what he intends by "positioning exclusively in the area of the fixing points of the support on the ground" as claimed, as the use of staples and pegs are known in the art as well as simply placing the mat directly on the surface of the ground.

As to claims 8 and 29, the examiner does not agree that the only function of the spattered glue is to retain the seeds in the web of Weber as modified, and that the capability exists for the glue to retain the grid as well as the needed teaching of Anton.

In conclusion, it is respectfully submitted that the arguments submitted are not convincing and that the rejections made in the prior office action are maintained in light of the examiners comments herein, and that in maintaining those claim rejections, said rejections are maintained herein by reference only as they are a matter of record.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 571-272-6907. The examiner can normally be reached on M-Tu.,Th.-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mansen can be reached on 571-272-6608. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Francis T. Palo/
Primary Examiner
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